UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

OILMAR CO. LTD., PANAMA,	:
Plaintiff,	:
	:
v.	:
	: Civil Action No. 3:03CV1121 (CFD)
ENERGY TRANSPORT, LTD., and	:
P.T. CABOT INDONESIA	:
Defendants.	:

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THE INTERESTED UNDERWRITERS	:
AT LLOYD'S and THAI PRODUCT CO.,	:
LTD.	:
Plaintiffs,	:
	:
v.	:
	: Civil Action No. 3:03CV1125 (CFD)
M/T SAN SEBASTIAN, et al.	:
Defendants.	:

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PT CABOT INDONESIA,	:
Plaintiff,	:
	:
v.	:
	: Civil Action No. 3:03CV1147 (CFD)
M.V. SAN SEBASTIAN, et al.	:
Defendants.	:

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CARBON BLACK PUBLIC CO., LTD.,	:
Plaintiff,	:
	:
v.	:
	: Civil Action No. 3:03CV1153 (CFD)
M/T SAN SEBASTIAN, et al.	:
Defendants.	

RULING AND ORDERS

I. ORDER ON CONSOLIDATION

Pursuant to a stipulation by the parties, it is hereby ordered that these four actions are

consolidated for all pretrial purposes.

II. RULING AND ORDER ON ATTACHMENTS

This case arises out of a fire and explosion on the ship M/T San Sebastian ("San Sebastian") while it was in the Red Sea.[1] The San Sebastian, which is owned by Oilmar, Company, Limited[2] ("Oilmar"), was carrying cargo under three separate bills of lading. After the explosion, Oilmar arranged for a transfer of the San Sebastian's cargo to another ship, the M/T Santa Cruz, in an apparent attempt to complete its obligations under the bills of lading and to earn the freights it was entitled to thereunder. As a result of the losses that resulted from the fire and explosion, disputes have arisen among Oilmar and the other parties to this consolidated action regarding their respective rights and obligations under the various bills of lading. Oilmar filed the lead case–a declaratory judgment action–on June 25, 2003. Between June 26, 2003 and July 2, 2003, the other parties to this action filed the three additional suits that comprise this consolidated action. In each of the three subsequently filed cases, the plaintiffs sought to attach the freights owed to Oilmar under the bills of lading and held by Odin Marine ("Odin"), pursuant to Rules B and C of the Supplemental Rules for Certain Admiralty and Maritime Claims. The requests for Rule B attachments were granted ex parte in each of the three suits, and the requests for maritime arrest of freights under Rule C were granted ex parte in two of the three cases.[3] Oilmar has objected to the entry of these orders.

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[1]The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1333.

[2]Oilmar Company, Limited, is a foreign corporation, apparently based in Panama. Its only asset is the San Sebastian.

[3]In member case Carbon Black Public Co. v. M/T San Sebastian, et al., 3:03cv1153(CFD) the Court ordered an ex parte attachment of any and all property of Oilmar within the District of Connecticut on July 18, 2003 pursuant to Supplemental Rule B. The Court did not enter any order in that member case on the basis of Rule C, however.

Pursuant to Supplemental Rule E(4)(f), Oilmar filed a Motion Under Supplemental Rule E to Vacate Ex Parte Arrest and Attachment Orders and for Related Relief [Doc. # 6] on July 15, 2003.[4] On July 24, 2003, a hearing was held on the defendant's motion. For the following reasons, the Court finds that the Rule B attachments were proper, and Oilmar and M/S San Sebastian's motion to vacate the attachments is DENIED.

"An attachment issued under Rule B is a quasi in rem proceeding which permits the assertion of jurisdiction over a defendant's property located within the district even though the court has no in personam jurisdiction over the defendant." Transamerica Leasing, Inc. v. Frota Oceanica E. Amazonica, S.A., No. 97-0556-CB-S, 1997 WL 834554, at *2 (June 26, 1997, S.D. Ala.). For Rule B Attachments to issue, the parties seeking it must meet four conditions: "(1) the plaintiff has an in personam claim against the defendant; (2) the defendant cannot be found within the district where the action is commenced; (3) property belonging to the defendant is present, or soon will be present, in the district; and (4) there is no statutory or general maritime law proscription to the attachment." Id. Here, each of the entities that acquired ex parte Rule B attachments have valid *in personam* claims against Oilmar arising from the fire and explosion on the San Sebastian. It is undisputed that property belonging to Oilmar–the freights held by Odin–is present within the district.[5] Nor have the parties raised any statutory or maritime proscription for the attachments. The sole issue that requires

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[4]Rule E(4)(f) provides, in relevant part that "[w]henever property is arrested or attached, any person claiming an interest in its shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated . . ."

[5]The Rule B attachment orders in the three member cases specify that any and all property of Oilmar in this district may be attached. The Court is not aware of any property of Oilmar present in this district other than the freights held by Odin. However, the Odin freights alone are sufficient to satisfy the third prong of the Rule B attachment standard outlined above.

discussion is whether the Oilmar can be "found within the district" for purposes of Rule B. Oilmar claims that it could be found within the district at the times the attachments were entered, therefore making the attachments improper. Because the Court finds that Oilmar could not be "found" in this district at the time the attachment orders entered, it holds that the Rule B attachments were proper.

It is well established that a defendant is

> "found within the district," in the context of this maritime Rule, only if the defendant "can be found within the district in terms of jurisdiction" *and* "can be found for service of process.". . . In other words, not only must the defendant be able to accept process, but the defendant must *also* 'be engaged in sufficient activity in the district to subject it to jurisdiction even in the absence of a resident agent expressly authorized to accept process.'"

VTT Vulcan Petroleum v. Langham-Hill Petroleum, Inc., 684 F. Supp. 389, 390 (S.D.N.Y. 1988) (citing Seawind Compania, S.A. v. Crescent Line, Inc., 320 F.2d 580, 582-83 (2d Cir. 1963)) (emphasis in original). Here, while Oilmar arguably meets one prong of the test in that it had designated an agent for service of process in Connecticut prior to the time when the Rule B attachments were sought, it does not meet the second prong because it was not present in this district in the "jurisdictional sense" at the time of the contested attachments. See VTT Vulcan, 684 F. Supp. at 391.[6]

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[6]In VTT Vulcan, the District Court held that the defendant was not present within the district despite its showing that it could be served with process within the district.

> I hold that maritime attachment is proper in this case, because defendant Langham-Hill cannot be "found within this district."
>
> As to one prong of the test–presence for "service of process"–[defendant] has shown that it could be served with process in the Southern District of New York when this action was commenced . . . . [However,] [e]ven if an agent was present [when the action was commenced] to accept service of process the other prong of the test enunciated in Seawind require [defendant] also show that *even in the absence of such an agent [defendant] was engaged in sufficient activity in the district to subject it to jurisdiction*...

VTT Vulcan, 684 F. Supp. at 391 (emphasis added).

Here, it has been shown that Oilmar did not "engag[e] in sufficient activity in [this] district to subject it to jurisdiction even in the absence of a resident agent expressly authorized to accept process." Seawind, 320 F.2d at 583. In Seawind, the defendant's corporate minutes and stock transfer books were kept in the district, and all of the corporation's officers were present in the district . . . Id. Nevertheless, the Court noted that "this volume of activity would possibly not, by itself, qualify as 'doing business' under ordinary tests." Id. The Court found that the defendant was "jurisdictionally present," however, because the contract giving rise to the underlying suit had sufficient ties to the district: "What respondent-appellee's volume of business may lack under ordinary tests, however, appellant supplies by the nature of its claim. The contract in the suit was made and allegedly breached" in the district. Id. Here, Oilmar's contact with Connecticut does not approach the level of the contacts present in Seawind. Indeed, the only connections with this district that Oilmar has asserted is that Odin–which is present in Connecticut–acts as its agent and that Oilmar had made a general appearance in the lead case in this consolidated action before any of the contested attachments were sought. Oilmar's contact with Odin is not enough to satisfy the jurisdictional prong of the test. It is far less substantial than the contacts the Seawind Court described as "possibly" insufficient. Oilmar does not keep records in Connecticut or have officers in Connecticut. More important, there is no indication that the contract that underlies this dispute was negotiated in, or breached in, Connecticut–which was the deciding factor in Seawind. With regard to Oilmar's claim that its appearance in the lead case satisfies the jurisdictional prong of the test, the Court finds that such an appearance is not sufficient. See VTT Vulcan, 684 F. Supp. at 392 ("Although past general jurisdictional contacts might satisfy due process concerns in other contexts, such past general jurisdictional contacts cannot satisfy the 'jurisdictional presence' prong of the test for vacating a maritime attachment."). If the result were otherwise, a

defendant could defeat an otherwise valid Rule B attachment simply by filing a lawsuit for the purpose of entering an appearance in the district. This would frustrate one of the primary purposes of Rule B, which is to obtain security for a claim where the defendant is not present within the district. See Winter Storm Shipping, Ltd. v. TPI, 310 F.3d 263, 268 (2d Cir. 2002) (noting that one of the rationales for maritime attachment is "to assure satisfaction if a suit is successful"). Thus, since Oilmar could not be found within the district, all four of the requirements for a Rule B attachment were satisfied, and the attachments were proper. See Transamerica Leasing, Inc., 1997 WL 834554, at *2.

For the preceding reasons, Oilmar's motion to Vacate Ex Parte Arrest and Attachment Orders [Doc. # 6] is DENIED.[7] This ruling is without prejudice to Oilmar challenging the Rule B attachments on the basis that one or all of the plaintiffs in the consolidated actions are over-secured.[8]

SO ORDERED this ___ day of August, 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[7]Because the Court finds that the freights held by Odin were properly attached pursuant to Rule B, it need not address the arrest and attachment orders issued pursuant to Rule C.

[8]In its memorandum in support of its motion to vacate the attachments, Oilmar argues that one of the plaintiffs, The Interested Underwriters at Lloyd's ("Lloyd's"), should be required to post counter-security for the freight balance. Oilmar argues that Lloyd's is over-secured and that the attachments were therefore sought in bad faith. As the Court finds that Lloyd's did not seek its Rule B and C attachments in bad faith, Oilmar's request for counter-security is also DENIED. As noted above, this is without prejudice to a subsequent challenge based on over-security.